



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
ANDREW J. KOSSACK

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

June 14, 2011

Council President Clyde South
Town of Knightstown
26 South Washington Street
Knightstown, IN 46148

Re: Informal Inquiry 11-INF-22; Records of town attorney

Dear President South:

This is in response to your informal inquiry regarding the Town of Knightstown's (the "Town") Town Attorney, Gregg Morelock (the "Attorney"). Pursuant to Ind. Code § 5-14-4-10(5), I issue the following opinion in response to your inquiry. My opinion is based on applicable provisions of the Access to Public Records Act ("APRA"), I.C. § 5-14-3-1 *et seq.*

In your inquiry, you seek an opinion regarding a dispute between the Town Council (the "Council") and the Attorney over whether or not the Attorney is required to disclose to the Council certain documents relevant to the Indiana Commission on Judicial Qualifications' investigation into the Town's court and former judge, Lewis Hayden Butler. On March 22, 2011, at a meeting of the Council, the Council asked the Attorney to provide the Council with a copy of "all pertinent documents related to the investigation of Judge Hayden Butler." The Attorney cited the Rules of Professional conduct and stated that he could not provide the records because Judge Butler was actually his client even though the Town paid for the Attorney's services.

The public access counselor has the authority to issue opinions as to alleged violations of the public access laws. *See* I.C. § 5-14-4-10. Typically, opinions regarding denials of access to public records are limited to requests made pursuant to the APRA. *See* I.C. § 5-14-5-6. I note that the APRA does not make a distinction between APRA requests made by public officials and APRA requests made by members of the general public or news media. *See* I.C. § 5-14-3-3. The APRA applies only to entities that fall within the APRA's definition of a "public agency," which is found in Ind. Code § 5-14-3-2. The burden of proving that an entity is a "public agency" within the meaning of the APRA is on the person asserting his rights under the APRA. *Perry County Dev. Corp. v. Kempf*, 712 N.E.2d 1020, 1023 (Ind. Ct. App. 1999). Here, nothing indicates that the Attorney or his firm is a "public agency" under the APRA. If an entity is not a public agency, it does not come within the ambit of APRA and has no duty to comply with it. If

the Town enjoys any rights to access this information beyond those provided in the APRA due to the nature of the Town's relationship with the Attorney, such rights are beyond the scope of the public access counselor's advisory authority to "interpret the *public* access laws upon . . . request. . . ." See I.C. § 5-14-4-10(4), (6).

If I can be of additional assistance, please do not hesitate to contact me.

Best regards,

A handwritten signature in black ink that reads "Andrew J. Kossack". The signature is written in a cursive style with a large, sweeping initial 'A'.

Andrew J. Kossack
Public Access Counselor

cc: Gregg H. Morelock